

REMARKS

Claims 1-29 are currently pending. Claims 1, 18, 22, 26, and 29 are written in independent form. Claim 5 is also written in independent form by virtue of this Amendment.

I. The Notice of Abandonment:

In response to the Notice of Abandonment, Applicant concurrently submits herewith a Petition to Revive under Rule 137(b).

II. Allowable Subject Matter:

At numbered paragraph 11 of the Office Action, the Examiner indicates that claims 5-16 and 19 would be allowable if they were rewritten in independent form. To capture allowable subject matter, Applicant rewrites claim 5 in independent form. The Examiner should allow claim 5 in the next Patent Office paper. The Examiner should also allow claims 6-15 by virtue of their dependency from allowable claim 5.

At numbered paragraph 12 of the Office Action, the Examiner allows claims 22-28.

III. Claim Rejection on Prior Art Grounds:

The Examiner rejects claims 1-4, 17, 18, 20, 21, and 29 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,295,506 to Heinonen et al. (“Heinonen”). Applicant respectfully traverses this rejection in view of the following remarks. Each of independent claims 1, 18, 20, and 29 is discussed separately below.

A. Independent Claim 1:

Applicant previously pointed out that Heinonen’s mobile telephone 1 does not include “circuitry for performing said independent wireless function to also sense at least one prescribed characteristic of a subject,” as recited in claim 1. Not persuaded, the Examiner counters that Heinonen’s battery and antenna elements meet the “circuitry” feature of claim 1. Applicant respectfully disagrees.

The rejection position is tenable only by placing a strained interpretation on the Heinonen reference. Consider Heinonen’s battery. Applicant agrees with the Examiner that the battery is disclosed as “powering” the measurement unit 2 and the phone 1.¹ However, an element used for powering is simply not pertinent to the circuitry defined by claim 1. This is because according to claim 1, the circuitry serves to “sense” a characteristic of a subject. The plain

¹ Heinonen (4:7-9).

meaning of the term “sense” is to perceive or detect. For these reasons, Heinonen's battery is not comparable to the claimed circuitry, and this remains the case even if claim 1 is given its broadest reasonable interpretation.

Also consider Heinonen's antenna. Applicant agrees with the Examiner that the antenna functions to receive calibration data that is transmitted from the answering device 10.² Applicant also agrees that the receipt of calibration data occurs prior to calculating a blood glucose test result.³ Simply put, however, the calibration data is not a “prescribed characteristic of a subject.” Indeed, the calibration data is information associated with a unique manufacturing batch of test strips 5.⁴ For these reason, Heinonen's antenna is not comparable to the claimed circuitry, and this remains the case even if claim 1 is given its broadest reasonable interpretation.

Applicant respectfully points out that Heinonen's disclosure is straightforward regarding the element that senses (or detects) a characteristic about the patient (or subject). Namely, the reflectometry system 3 measures the color change in the reagent 4.⁵ The reflectometry system 3, however, is not

² Heinonen (4:67 – 5:2).

³ Heinonen (5:3-7).

⁴ Heinonen (4:31-44).

⁵ Heinonen (4:10-13 and 55-57).

disclosed as performing a wireless function, much less performing such a function in an independent fashion.

Turning to the next point, Applicant respectfully points out that independent claim 1 is directed to a “non-invasive” measurement apparatus. As is well known in this art, the term “non-invasive” means that the apparatus may function (e.g., “sensing at least one prescribed characteristic of a subject,” as required by claim 1) without breaking the skin.

In contrast, Heinonen’s functionality is achieved only by implementing invasive, skin breaking measures. This is because Heinonen requires a user to deposit a blood sample on the reagent 4 before inserting the test strip 5 into the measurement unit 2.⁶ Without the blood sample, however, no analysis of the subject can occur.

B. Independent Claim 18:

Independent claim 18 is similar to claim 1 in that claim 18 recites “circuitry for performing said independent wireless function to also sense at least one prescribed characteristic of a subject.” Consequently, Applicant respectfully submits that claim 18 is patentable for reasons analogous to those noted above with respect to claim 1.

⁶ Heinonen (4:49-52).

C. Independent Claim 20:

Independent Claim 20 is similar to claim 1 in that claim 20 is directed to a “non-invasive” measurement method. Consequently, Applicant respectfully submits that claim 20 is patentable for reasons analogous to those noted above with respect to claim 1.

D. Independent Claim 29:

Independent claim 29 is similar to claim 1 in that claim 29 is directed to a “non-invasive” measurement apparatus. Claim 29 also recites (albeit in a slightly different format) the “sense” feature defined by claim 1. Namely, claim 29 defines a device having a first function involving “sensing at least one prescribed characteristic of a subject using said one of said transmission and reception functionality.” Consequently, Applicant respectfully submits that claim 29 is patentable for reasons analogous to those noted above with respect to claim 1.

CONCLUSION

For these reasons, Applicant respectfully submits that claims 1, 18, 20, and 29 are patentable, and that claims 2-4, 17, 19, and 21 are patentable at least by virtue of their dependencies. Accordingly, an early indication of the allowability of all of the pending claims is earnestly solicited.

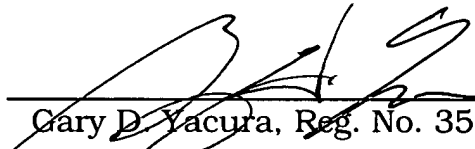
If the Examiner believes that a personal communication will expedite the prosecution of this application, the Examiner is invited to contact the undersigned at (703) 668-8000 in the Washington D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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